

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 22nd Floor  
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING**

**DATE: November 13, 2002**

**RH02022283**

**SUBJECT OF PROPOSED RULEMAKING**

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to amend Title 10, Chapter 5, to add Subchapter 10, Article 1, with four new provisions, enumerated sections 2700, 2700.1, 2701 and 2702. The proposed amendments to Title 10 regulations establish the governing procedure for those adjudicative hearings conducted by an administrative law judge employed by the Department of Insurance that are not governed by more precisely targeted regulations or are not made subject by statute to the provisions of Chapter 5 of the Government Code.

**PUBLIC HEARING**

A public hearing has been scheduled in connection with this proposed action. A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, regarding these proposed amendments to regulations. The hearing will be held as follows:

**Date and Time: January 21, 2003 at 10:00 am**  
**Location: Department of Insurance Hearing Room**  
**45 Fremont Street, 22nd Floor**  
**San Francisco, CA 94105**

The hearing will continue on the date noted until all testimony has been completed or 4:00 p.m., whichever is earlier. However, if no speakers are signed up by 10:00 a.m., the hearing will be adjourned.

**No hearing in Los Angeles is currently planned.** However, upon the specific request of an interested person received by January 3, 2003, an additional hearing will be held on January 22, 2003 at 9:00 a.m. in the Department of Insurance Hearing Room on the main floor of the Ronald Reagan State Building at 300 South Spring Street.

## **ACCESS TO HEARING ROOMS**

The facilities to be used for the public hearings are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person listed below for these hearings in order to make special arrangements, if necessary.

## **AUTHORITY AND REFERENCE**

The Commissioner proposes to adopt these regulations pursuant to the authority granted by Government Code section 11400.20. The proposed regulations will implement, interpret and make specific to the Department of Insurance the provisions of Government Code section 11400.20. Prospectively, it will also make specific the reference to administrative hearings found in Insurance Code section 21.5 (effective January 1, 2003).

## **PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on January 17, 2003. Please direct all written comments to the following contact person:

Andrea Biren, Chief Administrative Law Judge  
California Department of Insurance  
45 Fremont Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538- 4246

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

George Teekell, Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4390

## **DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than 5:00 p.m. on January 17, 2003. Any written materials received after that time will not be considered.

## COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: BirenA@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Andrea Biren and sent to the following facsimile number: (415) 904-5854.

**Comments sent to other e-mail addresses or other facsimile numbers, or otherwise not transmitted in accordance with the above instructions, will not be accepted. Comments sent by email or facsimile are subject to the deadline set forth above for written comments.**

## ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Chapter 5, Subchapter 4.5, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address in order to inquire about the appropriate procedures:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17th Floor  
Sacramento, CA 95814  
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person listed above. Please contact the Office of the Public Advisor for further information.

## INFORMATIVE DIGEST

### SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

As part of the revision of the Administrative Procedure Act (APA)<sup>1</sup> in 1997, the Legislature gave each agency subject to the APA<sup>2</sup> the discretion to adopt regulations governing adjudications<sup>3</sup> under either Chapter 4.5 (Administrative Adjudication: General Provisions) or Chapter 5 (Administrative Adjudication: Formal Hearing) of the APA. The Department of Insurance has in place such regulations regarding Proposition 103 rate

---

<sup>1</sup> Government Code section 11370 et seq. constitutes the administrative adjudication portion of the Administrative Procedure Act.

<sup>2</sup> The Department of Insurance is subject to the APA. See Gov't Code § 11410.20.

<sup>3</sup> An "adjudicative proceeding" is an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision. Gov't. Code § 11405.20. It is not informal factfinding or a decision to initiate a proceeding before the agency, even if the decision to initiate is in response to an application for an agency decision.

hearings, and it has regulations regarding workers' compensation insurance rate hearings. But it does not have regulations regarding many other types of hearings, including noncompliance hearings, cease and desist hearings, and viatical settlement hearings.

Under the APA's "Administrative Adjudication Bill of Rights (Gov't. Code §11425.10)," which is in Chapter 4.5 of the APA, the Department of Insurance "shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding."

These regulations are necessary in order to clarify the general governing procedure for Department of Insurance adjudications that do not already have specific procedural regulations or that are not required by statute to be conducted pursuant to Chapter 5 of the APA. These regulations will avoid confusion and unnecessary argument about proper procedure in a given adjudication; however, the promulgation of these regulations will not actually change current procedure. While clarifying that the formal procedures of the APA's Chapter 5 are not adopted, these regulations expand upon the Administrative Adjudication Bill of Rights by explicitly allowing the use of live witness testimony and cross-examination, subject to the reasonable control of the administrative law judge regarding the order and manner of presentation of witnesses, and limitations on length and repetitiveness of testimony. Additionally, these regulations codify the current practice whereby the presiding officer exercises discretion in determining the manner and use of and scheduling for pleadings, motions, intervention, discovery, rebuttal, briefs and other procedures. A copy of these regulations would henceforth be attached to the inception document in any case that does not have another, more precisely targeted governing procedure.

## **EFFECT OF PROPOSED ACTION**

Overall, the proposed regulations will clarify what the general governing procedure for Department of Insurance adjudicative hearings is by codifying current practice. The first two sections set forth the authority and purpose for the regulations, while the second two sections establish the minimal procedural requirements for the hearing and the broader discretionary authority of the presiding judge. The effect will be to eliminate uncertainty and confusion as well as unnecessary argument concerning appropriate procedure and the authority of the presiding judge.

## **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

## **COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING**

The Commissioner and the Department have determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

## **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

The Insurance Commissioner and the Department of Insurance have made an initial determination that the proposed regulations may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers, and indirectly, independent agents and brokers. To the extent that the businesses did not expect their witnesses to undergo cross-examination and to the extent that the businesses did not expect that a presiding judge might allow discovery in a given case, for instance, these regulations may entail increased litigation costs for these businesses. There are no projected reporting, recordkeeping, and other compliance requirements that would result from this proposed action. The Department has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

## **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations. All procedures now required were previously required; the regulations only clarify what is required and what may be required.

## **FINDING OF NECESSITY**

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

## **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

## **IMPACT ON HOUSING COSTS**

The matters proposed herein will have no significant effect on housing costs.

## **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

## **IMPACT ON SMALL BUSINESS**

The Commissioner has determined that the proposed amendments may indirectly affect small businesses to the extent independent agents and brokers (as opposed to those who are insurance company employees) qualify as small businesses. It is conceivable though unlikely that if, as a result of the new regulations, cases take longer or shorter to come to a conclusion, business may be affected.

## **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the proposed regulations.

## **TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS**

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons and the proposed text of the regulations will be made available for inspection and copying. Requests for the initial statement of reasons and/or the text of the proposed regulations or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at the Administrative Hearing Bureau, 45 Fremont Street, 22nd Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

## **FINAL STATEMENT OF REASONS**

Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

## **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

## **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the top of the page the major heading 'Protecting Consumers.' In this section, scroll down until you see the subheading 'BE INFORMED.' Click on the nearby 'Search for Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter " RH02022283" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Government Code section number of a code section that the regulations implement (for instance, "11400.20"), or search by keyword ("governing regulation," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the '**GOVERNING PROCEDURE FOR HEARINGS**' link, and click it. Links to the documents associated with these regulations will then be displayed.

## **MODIFIED LANGUAGE**

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: November 13, 2002

**HARRY W. LOW**  
Insurance Commissioner

By \_\_\_\_\_/s/\_\_\_\_\_  
Harry W. Low